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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,152	08/27/2003	Harald Post	1810US01-EE	5019

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EXAMINER

MAYO, TARA L

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/649,152	Applicant(s) POST, HARALD	
	Examiner Tara L. Mayo	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/14/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: reference to claim numbers. Delete the reference to claim numbers throughout the Specification and insert therefor the desired language. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16 through 18, 20 through 24, 26 through 28, 30, 33, 34, and 42 through 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Böttger et al. (U.S. Patent No. 5,582,893).

Hemphill '487, as seen in Figures 1 through 3, discloses a rescue underlay for a mattress comprising:

with regard to claims 16 and 43 through 45,

- a. a substantially flat material (1, 2), wherein the material is substantially the size of a mattress and provides spring travel (via corrugations 3);
- b. at least one pull member (L); and
- c. at least one patient securing belt (20 and 21);

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with regard to claim 17,

further comprising at least one mattress retaining band (16 and 19);

with regard to claim 18,

wherein the material comprises plastic (col. 2, lines 48-54);

with regard to claim 22,

wherein the material is fire-resistant (col. 2, lines 48 through 54);

with regard to claim 23,

wherein the material further comprises a coating on the underside (col. 2, lines 48 through 54);

with regard to claim 24,

wherein the coating is a plastic film (i.e., Teflon);

with regard to claim 26,

wherein the plastic film exhibits a lower sliding friction than the material;

with regard to claim 27,

wherein the coating is water-impermeable;

with regard to claim 28,

wherein the coating is washable;

with regard to claim 30,

wherein the coating is readily disinfected,

with regard to claim 33,

wherein the material comprises a plurality of layers (1 and 2) of substantially flat material fixedly attached to each other (col. 2, lines 54 through 56);

with regard to claim 34,

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wherein the at least one patient securing belt is attached to the underlay mat by sewing (col. 3, lines 12 through 16);

with regard to claim 42,

wherein the at least one pull member is loop; and

with regard to claims 43 and 44,

wherein the material provides spring travel (via corrugations 3).

With regard to claim 45, the method steps recited therein are inherent to the use of the device disclosed by Hemphill '487.

Hemphill '487 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claims 16 and 43 through 45,

the material being a spacer woven fabric having at least two layers spaced by bridge threads;

with regard to claim 20,

the spacer woven fabric being knitted; and

with regard to claim 21,

the spacer woven fabric having a thickness from about 4mm to about 20 mm.

Böttger et al. '893, as seen in Figures 1 through 1b, teach a woven spacing fabric (3) with at least two layers (4, 5) and bridge threads (7) for adding dimensional stability to a workpiece (col. 2, lines 20 through 52).

With regard to claims 16, 20 and 43 through 45, it would have been obvious to one having ordinary skill in the art of beds at the time of invention to modify the device shown by Hemphill '487 such that the flat material would comprise woven material as taught by Böttger et al. '893. The motivation would have been to enhance the dimensional stability of the material.

With regard to claim 20, the manner of forming the woven material (i.e., by knitting) is not germane to the issue of patentability of the device itself. Therefore, the limitation has not been given patentable weight.

With regard to claim 21, Hemphill '487 in view of Böttger et al. '893 discloses the invention except for the thickness of the woven fabric. It would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to make the material between 4mm and 20mm thick, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

4. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Böttger et al. (U.S. Patent No. 5,582,893) as applied to claim 24 above, and further in view of Failor (U.S. Patent No. 5,860,174A).

Hemphill '487 as modified above by Böttger et al. '893 discloses all of the features of the claimed invention with the exception(s) of:
with regard to claim 25,

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the plastic film being selected from the group consisting of polyurethane, polyester, and combinations thereof.

Failor '174, as seen in Figures 2 and 4, discloses a patient transfer mattress assembly (10) comprising a top mattress section (12) having a bottom surface (12B), wherein the bottom surface comprises a fluoropolymer film (i.e., Teflon) combined with a polyester fabric substrate (col. 2, line 64 through col. 3, line 5) for low friction, chemical and flame resistance, and barrier properties.

With regard to claim 25, it would have been obvious to one having ordinary skill in the art of beds at the time of invention to modify the device shown by the combination of Hemphill '487 and Böttger et al. '893 such that it would include a plastic film as taught by Failor '174. The motivation would have been to enhance the barrier properties of the coating.

5. Claims 31 and 35 through 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Böttger et al. (U.S. Patent No. 5,582,893).

The combination of Hemphill '487 and Böttger et al. '893 discloses all of the features of the claimed invention with the exception(s) of:
with regard to claim 31,

the material further comprising a braking surface exhibiting a higher sliding friction than the material;

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with regard to claims 35 through 38,

tunnel-like receptions;

with regard to claim 39,

three patient securing belts;

with regard to claim 40,

the underlay being permanently affixed to a mattress; and

with regard to claim 41,

the underlay being integrated into a mattress.

With regard to claim 31, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the device shown by Hemphill '487 and Böttger et al. '893 such that it would include a braking surface. The motivation would have been to restrict the mobility of the mattress on the underlay.

With regard to claims 35 through 38, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Hemphill '487 and Böttger et al. '893 such that it would include tunnel-like receptions for the patient securing belts to protect the same against wear during use, and to permit movement and/or replacement of the belts.

With regard to claim 39, the combination of Hemphill '487 and Böttger et al. '893 discloses the claimed invention except for three patient securing belts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an additional patient securing belt, since it has been held that mere duplication of

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the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

With regard to claims 40 and 41, the combination of Hemphill '487 and Böttger et al. '893 discloses the claimed invention except for the underlay being permanently affixed to or integrated into a mattress. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the underlay integral with a mattress, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. In re Lindber, 93 USPQ 23 (CCPA 1952).

Response to Arguments

6. Applicant's arguments filed 14 December 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the spacer fabric taught by Böttger et al. '893 would replace the material layer (1) of Hemphill '487 for the reasons set forth in the above Office action.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

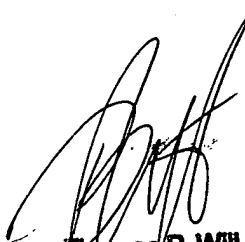
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


tlm

25 February 2006


Thomas B. Will
Supervisory Patent Examiner
Group 3600